

Remarks/Arguments

With this Amendment, Applicants cancel without prejudice Claims 1-18 and enter new Claims 19-42. New Claims 19-42 include, as a generic claim, the elected species--Species 3, figure 9. No new matter has been introduced with the new Claims. Entry and allowance of new Claims 19-42 are respectfully requested.

Applicants submit that new Claims 19-42 are not anticipated by Zubok et al. (U.S. Application Publication No. 2004/0176850; herein "Zubok"), Shelekov (U.S. Patent No. 6,039,763) or Feree et al. (U.S. Application Publication No. 2005/0267582; herein "Feree").

Applicants submit by way of a declaration under 35 U.S.C. 1.131 that Applicants' claimed invention was conceived and reduced to practice before the earliest priority date (e.g., reference date) of either Zubok and Feree. Applicants respectfully request the rejections relying on Zubok and Feree under 35 U.S.C 102(e) be removed.

With regard to Shelekov, Applicants point out that Shelekov does not teach a body having concave-convex articulating surface. Instead, Shelekov teaches a first plate with a first surface having a "*bimodal* convex-shaped first inferior surface" and a second plate with a "*bimodal* concave-shaped second superior surface" (emphasis added; Col. 3, ll. 15-26; Abstract; FIG. 1A and FIG. 1B). At Col. 4, ll. 25-30, Shelekov further teaches, "The first and second concave-shaped modes of the second articulating surface can be separated by a raised surface interposed the first and second modes." The described shape results in two concave regions and one convex region. Shelekov further describes the articulating surface as requiring "two laterally juxtaposed convex portions (4, 5)" (Col 5, ll. 56-57). Thus, the articulating surfaces of Shelekov are designed to "have a construction similar to that of the articulating joint surfaces of a knee" (Col. 3, ll. 12-14). Shelekov the specifies that "limitation of rotation is within a physiologic range, i.e., 0° to 10° of rotation or +/- 5 degrees off center in either direction, to provide moderate degrees of restraint to the device" (Col. 5, ll. 50-53) which is distinctly different from Applicants' construction and design (see, e.g., Applicants' specification para. [0010]). As such, Shelekov does not anticipate the claims because Shelekov teaches an entirely different invention and does not teach or suggest each and every element of Applicants' claimed invention as is

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required for a showing of anticipation. Applicants respectfully request the rejection relying on Shelekov under 35 U.S.C 102(b) be removed.

Conclusion

In light of the remarks and arguments presented herewith, Applicants respectfully submit that the claims pending in this application for patent are in condition for allowance. Favorable consideration for and allowance of the pending claims are therefore respectfully requested.


A Petition for Extension of Time for 3 months and the appropriate fees are provided with this paper. No additional fees are believed to be due. If this is incorrect, Applicants hereby authorize the Commissioner to charge such fees, other than the issue fee, that may be required by this paper to Deposit Account 07-0153.

Should the Examiner have any questions or comments, or if further clarification is required, it is requested that the Examiner contact the undersigned at the telephone number listed below.

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Respectfully submitted,

GARDERE WYNNE SEWELL LLP



Monique A. Vander Molen
Registration No. 53,716

1601 Elm Street, Suite 3000
Dallas, Texas 75201-4761
(214) 999-4330 – Telephone
(214) 999-3623 – Facsimile